

Application Serial No.: 10/774,828  
Filing Date: July 6, 2004  
Attorney Docket No.: 2821 (203-3253)  
Page 7 of 13

**Response to Final Office Action  
mailed February 13, 2008**

### **REMARKS**

The present application has been considered in view of the Final Office Action that was mailed February 13, 2008. Claims 1, 4-6, 10-11, and 21-28 are currently pending. Applicant respectfully submits that claims 1, 4-6, 10-11, and 21-28 are allowable over the cited references of record, and in view of the following remarks and arguments, reconsideration and allowance of the present application are earnestly solicited.

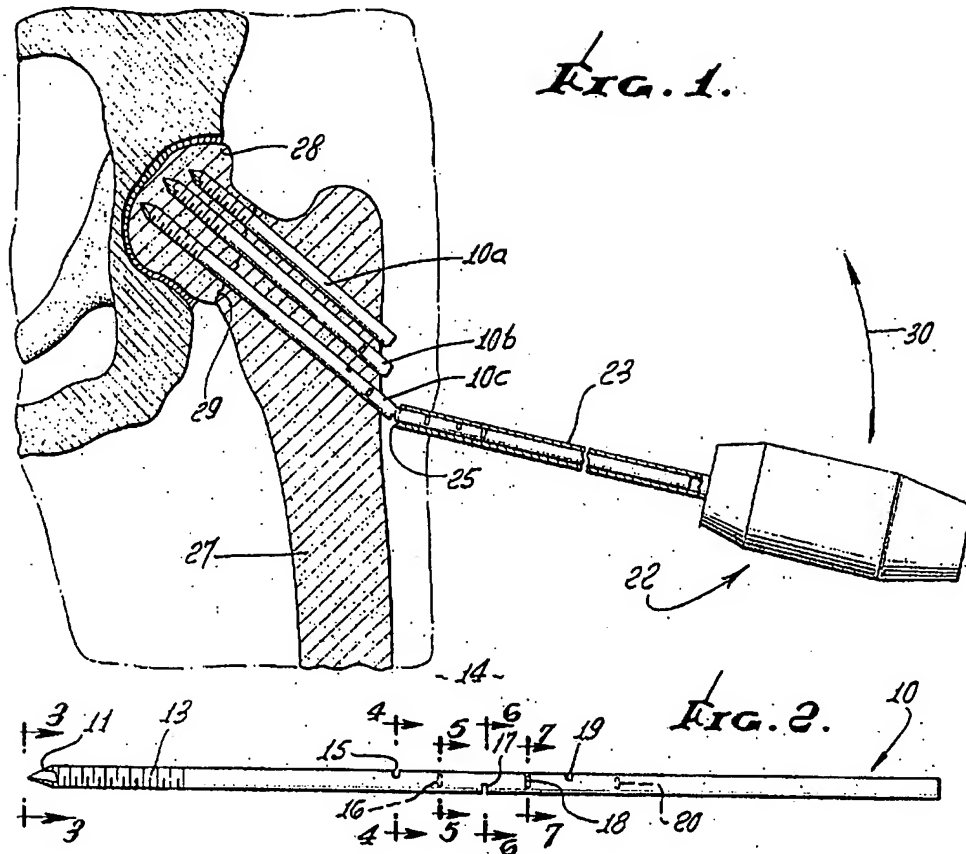
Claims 1, 4-6, 10-11, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,439,467 to Benderev *et al.* (hereinafter "Benderev") in view of U.S. Patent No. 4,635,637 to Schreiber (hereinafter "Schreiber") and U.S. Patent No. 3,842,824 to Neufeld (hereinafter "Neufeld"). Applicant respectfully submits, however, that Benderev in view of Schreiber and Neufeld fails to suggest each and every element recited in claims 1, 4-6, 10-11, and 28.

Independent claims 1 and 28 each recite an instrument kit comprising, *inter alia*, at least one template including "attachment structure formed at a proximal end thereof" and "a handle having receiving structure formed at a distal end thereof corresponding in configuration to the attachment structure of the at least one template, the receiving structure being configured to selectively receive the attachment structure such that the at least one template is releasably engagable with the handle."

In the Final Office Action, Benderev was characterized as disclosing an instrument kit that includes an elongated body defining X, Y, and Z axes and having an offset distal end portion that is capable of performing a repair procedure. It was acknowledged that the elongated body does not define a width extending along the Y-axis and a height extending along the Z-axis, the wherein the width is less than the height, and Schreiber was relied upon for disclosure of this concept. However, the Examiner recognized that the combination of Benderev and Schreiber still fails to disclose a handle that is removably attachable to a proximal end of a template, and Neufeld was relied upon for disclosure of this concept.

Even if it is assumed, *arguendo*, that the characterizations of Benderev and Schreiber proffered by the Examiner are accurate, the suggested characterization of Neufeld is erroneous.

Neufeld relates to surgical pins and the implantation thereof. With reference to FIGS. 1-2 of Neufeld below, the disclosed surgical pin 10 includes an intermediate portion 14 having a series of weakened portions or notches 15-20 formed along its length. (See col. 2, lines 41-43). During use, a breaking tool 22 is employed to fracture the pin 10 at one of the selected notches. (See col. 2, lines 65-66). The breaking tool 22 includes a rigid tube 23 having one end that is secured to a handle 24 and another end that is configured and dimensioned to receive the pin 10. (See col. 2, lines 66 – col. 3, line 5).



In the Final Office Action, the breaking tool 22 was characterized as the "handle" recited in independent claims 1 and 28, and it was asserted that the breaking tool 22 is removably attachable to the pin disclosed in Neufeld. Neufeld discloses, however, that the bore 26 of the tube 23 is larger than the diameter of pin 10 such that the tool 22 may be easily slipped over the rear end of the pin. (See col. 3, lines 2-4). The breaking tool 22 merely receives the pin 10 and is never connected thereto. Accordingly and contrary to the Examiner's assertion, the breaking tool 22 is not attachable to the pin 10.

Further, there are no statements in the disclosure, nor is there any illustration in Neufeld's figures, to support an assertion that the pin 10 and the tube 23 are attachable. In fact, to the contrary, as seen above in FIG. 2, the proximal end of the pin 10 is smooth and uniform, as are the distal ends of both the tube 23 and the handle 24. Accordingly, Applicant respectfully submits that Neufeld is devoid of any evidence suggesting that the pin 10 includes "attachment structure formed at a proximal end thereof" or that the breaking tool 22 includes "a handle having receiving structure formed at a distal end thereof corresponding in configuration to the attachment structure of the at least one template, the receiving structure being configured to selectively receive the attachment structure such that the at least one template is releasably engagable with the handle" as recited in independent claims 1 and 28.

Moreover, although not explicitly stated in the disclosure, Applicant respectfully submits that there is evidence in Neufeld to suggest that the handle 24 is fixedly secured to the tube 23. Neufeld describes that after the open end of the tube 23 is placed over the pin 10, the handle 24 is urged laterally to break the pin 10, i.e., at one of the notches 15-20. (See col. 3, lines 37-46). Were the handle 24 to be releasably attached to the tube 23, given the amount of force necessary to fracture the pin, it is conceivable that the handle 24 and the tube 23 may become disconnected. Accordingly, contrary to the Examiner's assertion, Applicant respectfully submits that Neufeld teaches a handle that is fixedly secured to the remainder of an instrument, and therefore, that the disclosure in Neufeld teaches away from a template that is "releasably engagable with the handle" as recited in independent claims 1 and 28.

For at least these reasons, *inter alia*, Applicant respectfully submits that the combination of Benderev with Schreiber and Neufeld fails to suggest each and every element recited in independent claims 1 and 28, and therefore, that independent claims 1 and 28 are allowable under 35 U.S.C. § 103(a) over Benderev in view of Schreiber and Neufeld.

As claims 4-6 and 10-11 depend either directly or indirectly from independent claim 1 and include each element recited therein, for at least the reasons that independent claim 1 is allowable over Benderev in view of Schreiber and Neufeld, *inter alia*, Applicant respectfully submits that claims 4-6 and 10-11 are also allowable.

Claims 21-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Benderev in view of Schreiber and Neufeld and further in view of U.S. Patent No. 5,501,692 to Riza. The Examiner acknowledged that the combination of Benderev, Schreiber, and Neufeld fails to suggest structures in the handle for attachment to the template including a bore, groove, or lock rod, as well as the configured depths, and relied on Riza for the disclosure of these concepts.

As previously discussed, independent claim 1 is allowable over Benderev in view of Schreiber and Neufeld. Even if it is assumed, *arguendo*, that the characterization of Riza proffered by the Examiner is accurate, including the structures purportedly disclosed therein would fail to cure the deficiencies in the combination of Benderev, Schreiber, and Neufeld described above.

Application Serial No.: 10/774,828  
Filing Date: July 6, 2004  
Attorney Docket No.: 2821 (203-3253)  
Page 12 of 13

**Response to Final Office Action  
mailed February 13, 2008**

Accordingly, and for at least this reason, *inter alia*, Applicant respectfully submits that Benderev in view of Schreiber, Neufeld, and Riza fails to suggest each and every element recited in independent claim 1, and therefore, that independent claim 1 is allowable over Benderev in view of Schreiber, Neufeld, and Riza. As claims 21-27 depend either directly or indirectly from independent claim 1 and include each element recited therein, for at least the reasons that independent claim 1 is allowable over Benderev in view of Schreiber, Neufeld, and Riza, *inter alia*, Applicant respectfully submits that claims 21-27 are also allowable over Benderev in view of Schreiber, Neufeld, and Riza.

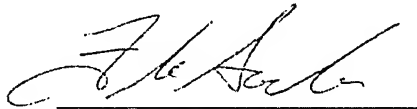
In view of the foregoing remarks and arguments, Applicant respectfully submits that the pending claims, i.e., claims 1, 4-6, 10-11, and 21-28, are allowable over allowable and respectfully requests reconsideration and allowance of above-identified application.

Application Serial No.: 10/774,828  
Filing Date: July 6, 2004  
Attorney Docket No.: 2821 (203-3253)  
Page 13 of 13

Response to Final Office Action  
mailed February 13, 2008

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicant's undersigned representative at the number indicated below.

Respectfully submitted,



Francesco Sardone  
Reg. No. 47,918  
Attorney for Applicant(s)

***CARTER, DeLUCA, FARRELL & SCHMIDT, LLP***  
445 Broad Hollow Road, Suite 225  
Melville, New York 11747  
Phone: (631) 501-5700  
Fax: (631) 501-3526

**Correspondence Address:**

Chief Patent Counsel  
Tyco Healthcare Group LP (d/b/a Covidien)  
60 Middletown Avenue  
North Haven, CT 06473  
FS/MJD:nr